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HEADLINE: Where there's smoke you may be fired - or at least not hired

BYLINE: By Larry Hackett, New York Daily News

BODY:

Smoking is dirty, unhealthy and expensive. And at certain businesses, it's the reason some people aren't hired.

About 60 percent of American companies regulate smoking, studies show, either by corralling smokers into one area or banning it from the job site. But a fraction of companies - about 6 percent nationwide - refuse to hire smokers. Anybody caught smoking, whether it's in their car, at the mall or even at home, faces dismissal.

"We have a right to make a decision to protect the health and well-being of our customers and associates," says Louis Fortunoff, explaining the 5-year-old smoking prohibition at his family's chain of housewares stores. Concern about the effects of passive smoke, along with fear of fires in crowded stores, led to the decision, he says.

Keeping non-smokers happy is the biggest reason for the bans, says the Administrative Management Society.

There is also a savings in health costs, which are almost always higher for smokers. That rationale has been used by some police and fire departments, whose medical bills are picked up by taxpayers.

Prospective employees at non-smoking companies are asked to abide by the edict, verbally or in writing. "We don't police them," says John Hughes, personnel director for New Brunswick Scientific, an Edison, N.J.-based manufacturing company. "How do I know what they do after work? We'd prefer if they didn't (smoke)."

Hughes and Fortunoff say their companies have fired people for breaking smoking rules. Both companies also face challenges: The New Jersey Division of Human Rights has taken Fortunoff before an administrative law judge on behalf of a female smoker denied a job in a Fortunoff store restaurant, while a labor union at New Brunswick Scientific is trying to end the non-smoker rule.

Turner Broadcasting System has refused to hire smokers since November 1986, in part for health reasons, in part because Ted Turner hates smoke, employees say. There have been recent reports of firings, but a spokeswoman insists "nobody has been hired and then fired as a result of smoking."

Is barring smokers illegal? At least five states - Illinois, Arkansas, California, Virginia and Oregon - have laws protecting smokers from

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discrimination. Courts have supported on-site smoking prohibitions, but they have yet to rule on the legality of total smoking bans.

Those who support total bans say smoking isn't a constitutionally guaranteed right, and that it's ludicrous to lump smokers with traditionally discriminated minorities.

Others think the bans can be beaten. "We're talking about a unique situation where there's an attempt to control off-the-job conduct," says labor lawyer Karen Honeycutt. She and others say the problem isn't discrimination; it's an invasion of privacy.

Workplace smoking consultant Robert Rosner of the Smoking Policy Institute in Seattle thinks bans are legal but "a stupid idea" because they are unenforceable and draconian.

He advocates the course taken by many big companies: on-site restrictions and bans, coupled with aggressive tactics to help people kick the habit. Extra vacation, cash bonuses and smoking cessation programs are among the tools used by some large corporations.

Even aggressive anti-smokers question whether total smoker bans are worth it. "We don't care what people do in the privacy of their own home; if people want to compromise their health, who cares?" says anti-smoking activist Joe Cherner of Smoke Free Education Services on Long Island. "What most people care about is smokers compromising the health of innocent people."

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